

1 to look at this in the framework of the contract and als
2 -- I mean, you -- you -- everything in that unit price has
3 to incorporate all these requirements, okay.

4 Q For example.....

5 A Well, if you -- this -- see, this type of contract is --
6 is -- the government likes these types of contracts
7 because they're fully transparent and therefore
8 audit-able. So when you go out, you -- you work -- you
9 have that list of tasks or the unit price schedule is what
10 I would always call that. And if you're going out there
11 and doing an audit, you see an elbow up there, a two and a
12 half inch elbow, that's what you'd get. All right.
13 There.....

14 Q And that's what you pay for?

15 A You pay for it. That's -- that's the government's mind
16 set in regards to these types of contracts. That's why
17 they like them. It doesn't matter what kind of a story
18 about that elbow is. How difficult or how easy it was, it
19 doesn't matter. You get paid for that elbow.

20 Q And that helps clarify for me what this unit price
21 reference mean because for example, the definition from
22 the contract says each -- the unit price on the bid
23 schedule for each item includes all materials, labor,
24 equipment, tools, quality control testing, mobilization,
25 demobilization, overhead, profit, bonding, and submittals

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1 down on that unit price schedule.

2 Q Because the contractor, the general contractor, is putting
3 himself at risk if he underestimates the cost of doing a
4 unit price item.....

5 A Yeah, it's a -- it's -- it's a -- you know, the government
6 likes them because it's very indisputable. I mean, if
7 you've got a piece of equipment that's installed, that's
8 what you get. So any -- you know, if there are any
9 disputes then they can be resolved by means of an audit.
10 In other words, you can -- differences in line items and
11 quantities can be resolved by an audit.

12 Q You can go look at the job.

13 A Yeah. That's why -- that's the -- that's the -- the --
14 the premise is that the government really loves these
15 things because these types of contracts are full
16 transparent and audit-able, all right. It's -- it's a --
17 that's the basis of the contract, is the unit price
18 schedule in the context of the project documents.

19 Q And during the course of your deposition, Mr. Frere, I'm
20 going to refer to either the project or the job.

21 A Uh-huh. (Affirmative)

22 Q Whenever I say that, I'm going to be referring to the
23 project that brings us here, the Elmendorf fire protection
24 contract. Is that okay with you?

25 A Yes.

1 be paid like 1.9 million?

2 A In a meeting with -- I think it was Ray Hamilton and Bill
3 Jury.

4 Q Okay.

5 A We -- in the fall we got -- every once in awhile we would
6 get together and go over where we were fund-wise because I
7 was always terrified of not having sufficient funds to --
8 to pay Kanag'iq in accordance with the terms of our
9 contract. Because the terms of our contract is about as
10 unambiguous as terms of a contract I've ever dealt with.
11 So every decision I made on this contract was in the
12 context of the terms of this contract.

13 Q And looking at the third page of Exhibit G, there's email
14 from -- are you on the third page? There's an email from
15 you to Bill Jury dated Friday, March 3rd, where you refer
16 to the assumption that our contract was with GMW?

17 A Right. Well, the thing is, is I had assumed that they had
18 had a fixed price con -- that's what I was hearing.
19 That's -- you see that GMW and Kanag'iq had had a fixed
20 price contract. I say, why would Bill Jury be doing
21 something like this under a -- you know, and something
22 like this was performing an audit, you see. Why would --
23 if he had a fixed price contract, then he'd be doing it
24 for some reason -- basically he'd be say -- be building a
25 case against himself is what I felt. I was saying, this

1 to the emails, Exhibit G, and I'm still on page 3, looking
2 at the bottom, and I'm referring to an email from you
3 that's dated March 3rd, it's late afternoon. You're
4 saying, Bill, Elmendorf is extremely satisfied. It got
5 what it paid for. Is that a true statement?

6 A Yes, it is and at the end of the -- and from a -- first of
7 all, I was always terrified of not having sufficient funds
8 to pay Kanag'iq, I mean, on this contract. And this type
9 of contract, it is so transparent, it's so clear cut, is
10 that -- I mean, we go out and do an audit, you're going to
11 know how much you're going to get paid, okay. Now this
12 thing has got warts. All contracts are not perfect. But
13 it's staggering how easy it is to come up with a -- I can
14 see why the government likes doing these things though
15 because they're very easily -- in the -- at least from the
16 government's standpoint, it's easy to der -- to determine
17 how much a contractor is worth or gets for that contract.

18 Q So.....

19 A So, yeah.

20 Q So when all is said and done, Elmendorf felt that
21 Kanag'iq.....

22 A Oh yeah.

23 Qhad been properly paid?

24 A Well, yeah. And for -- well, from my perspective, yes. I
25 never went back and did an audit, which is what I should

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1 have done, but I said I haven't been hearing anything from
2 Kanag'iq, okay, so I figured if they -- we were having
3 money problems, that I would have heard of it. I also
4 knew what the contractor who did the vast majority of work
5 on this contract, what amount he was -- at least in my
6 understanding, would have been -- would accept in, you
7 know, the 1.9 million, which is what I understood he was
8 going -- GMW was going to get after the meeting with Ray
9 Hamilton. And then I now know the amount that what -- or
10 at least I -- what GMW is suing G -- Kanag'iq for. I
11 said, yeah, we're -- I mean, I see that amount of money on
12 that job, I mean, one of the best decisions I ever made in
13 a contract was to cut it off when I did because I mean the
14 price -- I had no idea what -- what it was going to cost
15 as it rolled on, but yes, I know that to -- from a
16 reasonable and practical standpoint, 2.6 million dollars
17 to Kanag'iq.

18 I know that the contractor that did the vast
19 majority of the job is not suing for the, you know, all of
20 that. So yeah, I'm -- we're extremely satisfied. I mean,
21 this was such a wonderful contract. It was a dream
22 contract until things got -- until it turned into a
23 runaway train in the final option here. But we had the
24 worst fire prevention record in the Pacific Air Force.

25 Q When you said.....

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1 A And we became the best after the term -- after we bid
2 this, after the three years or so we had this contract.

3 Q When you say it became a runaway train in the third option
4 year, what are you talking about?

5 A Well, I had no idea how much it -- we're -- you know, I
6 had 2.6 million dollars and I could not afford anything
7 more than that. And I -- I mean, I had no idea what -- I
8 had nothing else to turn to but to turn to say this is,
9 you know, Steve, you've got to be able to -- it was a
10 runaway train because I could -- the -- the bids, the
11 prices that I was looking at would fluctuate from when I'd
12 sit down with Bill, we were all over the place.

13 I mean, I'd hear -- I've looked at these bids
14 and I'd go what the heck are you doing, Bill? Are you
15 paying -- been paying them what they've been asking for,
16 or something similar to that. If I didn't say it, I said
17 something similar to that. I could never pin down prices
18 because that's all I had to gauge, was whether we could do
19 this work in the amount -- the money in these bids that I
20 would see in the con -- that I was obligated to pay
21 Kanag'iq in accordance with the terms of the -- the
22 contract. And I had no confidence in any of these prices
23 that we were getting because they were changing as often
24 as -- seemingly changed as often as the outdoor
25 temperature was changing, so.....

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1 Q What was the source of those price changes as you
2 understood it?

3 A Well, I -- well, they had -- they were coming in from the
4 subcontractors, Kanag'iq wasn't doing anything.

5 Q Looking at the fourth page of Exhibit G.....

6 A I assume that they were coming from the sub -- I mean,
7 these -- where these prices were coming from because
8 Kanag'iq doesn't do the -- didn't do anything other than
9 manage the contract. And they did do some outdoor work,
10 you know, but -- so that's -- they had to have been coming
11 from -- at least I assume they were.....

12 Q Yeah.

13 Afrom the subcontractors. I mean, they should have
14 been coming and I had assumed they had been coming from
15 the subcontractors.

16 Q Okay. Looking at the fourth page of Exhibit G, at the
17 top, there's an email where you're saying to Bill, quote,
18 it's even worse than I thought. Our bogus conclusions
19 were based not -- on not only fictitious contract and
20 three or more bogus assumptions. Jeez, I hope Glen didn't
21 spring for champagne and dinner for his staff at the
22 Corsair based on what Steve said that he was building a
23 case against KCCI for fraud. Please don't sue me. End
24 quote. Was this after you had done your investigation and
25 you realized that you had made some mistaken assumptions?

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1 A Yeah, I made a assumption that -- that I couldn't prove
2 that I could not -- see, I was adamant. I figured that --
3 that Kanag'iq was stiffing GMW. I was adamant about this
4 because I said what's this guy doing? Why is he
5 emphasizing unit prices now when he never did? And see,
6 that was one assum -- why would -- was -- because I -- the
7 assumption was that he had a fixed price contract, okay.
8 And then I go well, if he's due -- has a contract similar
9 to what we have between ourselves then he's doing what he
10 should be doing, all right.

11 So there was one assum -- the other one is that
12 the prime contractor always stiffes the subcontractor. And
13 I went into that. And then I -- two -- or the third one
14 was is that I -- I thought I had privileged information
15 that GMW, that hey, it was my understanding that Kanag'iq
16 was going to pay GMW 1.9 million and then I find out later
17 that he gets 1.6. I -- he's dead meat, all right. He
18 never emphasized the unit prices. Prime contractor always
19 stiffes subcontractor. And then, what was the third one, I
20 can't remember but I rattled them off.

21 Q Okay. Going on to -- let's see, I'm losing count here.

22 A I didn't think I'd see these here, but like I say, I got
23 to tell the truth.

24 Q I thought about it, but you said show them to anybody,
25 so.....

1 A You know, this is how unreason -- impractical these are
2 for an administrator, these contracts. You really don't
3 know what the estimated quantities and what -- are until
4 you go back and do the -- you know, you do an audit. And
5 that's why I said this, I said well, there's no sense of
6 me trying to do -- modify these contract deliveries and
7 modify these deliveries to make, you know, shift the unit
8 -- you know, the change to the units and then change the
9 quantities.

10 I mean, it was really impractical to expect me
11 to do that, to be down to the level of accuracy that's
12 necessary to determine what a contractor is going to get
13 paid. I just said, well, it's this type of a contract,
14 Steve, I said to myself, we'll pay them -- you know, I'll
15 pay Kanag'iq as we go and then at the end of the contract,
16 I was prepared to go out and do an audit and go, you know,
17 here we go. This -- because that's the only way you can
18 determine how much the -- I mean.....

19 Q Sure.

20 Ait was pointless for me to con -- to do
21 modifications. The intention for -- because it would be
22 overwhelming -- one, I didn't want to do it because it
23 would be overwhelming our contracting squadron with a
24 flood of amendments. And that's the reason why I quit
25 doing them, you know, by the book. Because even if I sent

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1 them my best -- and I tried this on several occa -- there
2 -- there were mods even when I did my best to try to
3 modify each delivery order but they were never going to be
4 accurate anyway so why waste the time. Let's just pay
5 these guys while we're going along and when we're done we
6 come back and we do an audit and that's that. I never
7 would have proceeded with this contract unless I knew that
8 -- you know, why waste your time trying to make it
9 accurate just to -- you know, just to do it for the -- to
10 maintain the integrity of the process.

11 So -- so what we did, as I said, we're going to
12 throw it all into one delivery, all these delivery orders
13 into one delivery order and bill against these delivery
14 orders. And then at the end of contract, go out and do an
15 audit and see exactly what a contractor is supposed to get
16 paid.

17 Q Earlier I had asked you about Mr. Johnson making negative
18 comments about Kanag'iq and you mentioned that, I believe,
19 he had. And I'm not sure if I followed up on them. What
20 kinds of negative things did Mr. Johnson say about
21 Kanag'iq?

22 A Well, you know, the only things that I heard him say
23 negative about Kanag'iq was that he was stiffing him.
24 Okay, that's really the only -- you know, in this
25 business, I've known a subcontractor not to have -- not to

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1 it was a -- just the King Salmon one. The King Salmon
2 probably because that was a -- I know that he had had
3 trouble there and the 3rd contracting squadron was
4 involved in that. So there may have been some negativity
5 to that respect to Kanag'iq but it wasn't generated by
6 Glen. You look at the fence project with Hazim Eunice
7 (ph), who is our -- Hazim is H-A-Z-I-M, they have a
8 fencing contract. I mean that thing is a good contract.
9 There's never been any negative -- negativity in that
10 respect.

11 But I think the problem -- and this was my
12 perspective to what -- what I -- the most negative -- I
13 think my primary criticism with Kanag'iq would be is that
14 they were not really involved in their contract. That
15 they are not effectively -- they're not effective managers
16 of these contracts. They have very little to contribute
17 to the contract, at least on this one.

18 I think that Kanag'iq was let down by people
19 that they didn't trust to manage this contract, you see.
20 Norm -- and that was part of the problem but I don't think
21 anything -- I don't think there's been anything -- any
22 negativity by anyone in regards to the -- to the status of
23 Kanag'iq at Elmendorf. I think that the contracting
24 squadron based their decisions on our contractors'
25 capabilities and what they see. And -- but I don't think

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1 there's any reason why there should -- Kanag'iq shouldn't
2 do work on this base but at the same time, I don't think,
3 at least on this contract, that they were fairly clueless.
4 They had no idea what was going on in the field. That is
5 just my opinion. So.....

6 Q When you had discussions with Glen Johnson, did you ever
7 talk to him about whether or not GMW had a unit price
8 contract with Kanag'iq?

9 A No. I never discussed that with him. I did -- I thought
10 that -- I think when I talked to Glen I think we told --
11 he was getting -- he was giving lump sums. So I assumed
12 that's what it was. I assumed that Glen was giving bids
13 to Kanag'iq and that was it. And that our contract, I
14 knew what it was and I still know what it is, so -- and
15 that somehow -- I don't -- I didn't even know Kanag'iq was
16 even exercising this contract or ev -- maybe -- or
17 assuming their prices, the bids they were getting from GMW
18 in the context of a unit price contract, you see. I --
19 I.....

20 Q Did you ever see whatever submittals GMW gave to Kanag'iq?

21 A I think Glen would show me some -- you know, he -- but I
22 never really did. I -- I saw them, they were on the form
23 -- they were on the unit -- like the unit price bid. He
24 would show me like -- I think he had showed me the one for
25 the -- he didn't give it to me but he showed me the one

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1 A I -- I -- when you start getting into the fire, I mean, I
2 have a fundamental understanding but that's about it. I'm
3 not familiar with this -- with this boilerplate stuff.

4 Q Okay. On that specific regulation, and I won't hold it to
5 you in any context that matters, but what is your general
6 understanding of what that dispute regulation is or does?

7 A Well, if there was a dispute between the government and
8 the -- Kanag'iq, for example, if you're going to put it in
9 context, that we would reconcile the disputes in the -- in
10 the -- with that regulation, within the terms of that
11 regulation.

12 Q Do you have a general sense of what that regulation
13 provides?

14 A No.

15 Q I mean, does it call for arbitration for example or
16 anything like that?

17 A I have no idea.

18 Q Let's see. Is GMW currently doing work as a subcontractor
19 on Elmendorf?

20 A Yes.

21 Q Is that fire protection work?

22 A Yes.

23 Q Who is the prime contractor on that project?

24 A Windsor. Windsor Construction.

25 Q Does Windsor have a unit price contract with the

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1 deposition today?

2 A You mean -- did I what?

3 Q Did you review any documents to prepare for your
4 deposition today?

5 A Yes.

6 Q What kind of documents did you review?

7 A I reviewed -- I had some notes here that I brought, just
8 in general notes about what type this contract was because
9 -- so I had -- I've done this before and I'd -- so I had
10 some, you know, this describes what type of a contract
11 that is in clear terms. I also looked at -- I also
12 brought the clo -- the price schedule. And then I also
13 brought some correspondence between myself and my boss
14 about these material -- this -- these -- oh, what would be
15 -- DD form 1354, transfer and acceptance of military real
16 property.

17 I brought those -- when I had spoken to Sharon
18 [sic] -- or Sarah, when I had spoken to her at last time,
19 I told her that I was performing these audits with Bill
20 Jury and that I'd -- she brought up this document, said
21 the transfer of acceptance of military real property and
22 what those were and I brought them with me just to explain
23 why they were very inaccurate. That I was going to have
24 to go back and do them. And that the audit was going to
25 help me do that. So I brought that stuff just to -- and I.

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1 brought the correspon -- basically these were really bad
2 and they were so ridiculous I went to my boss and I said,
3 listen, you know, I don't know who it was that gave you
4 these to sign but -- but basically I wanted to explain why
5 -- why these were way off.

6 Q First you mentioned some notes. Let's talk about that for
7 just a second. Are those notes that you made recently or
8 were those notes that you made at the time. I mean.....

9 A You mean.....

10 Q You referred to some notes about the contract.

11 A Oh yeah.

12 Q Are those notes that you made recently or are those notes
13 that you made during the course of conversations with, for
14 example, Bill Jury or.....

15 A Oh no, these are just ones I write down, hey Steve, if
16 they ask you this then, you know, this might help you
17 answer. That's basically -- I never am given the list
18 before of questions.

19 Q Okay.

20 A No, these are things that -- because I can get rattled
21 when I do these things sometimes and not think straight.

22 Q Yeah. You mentioned that you had been deposed once
23 before. What kind of case was that?

24 A That was a -- that was Alaska Mechanical versus the Air
25 Force and it was a -- I was wi -- I was actually deposed

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1 Q And that's when you discussed those real estate transfer
2 forms?

3 A Yeah, she had asked me -- she had asked me -- you know, I
4 had told her that -- that I was doing a performance -- or
5 I was doing this survey and why I had to do this. That I
6 had no alternative but to participate in this survey. And
7 then she had asked about these and I had said I had to
8 reconcile these. You see, what I've got to do is put it
9 onto these -- what exactly went into these things.

10 Q Sure.

11 A So.....

12 Q And when you say these, you're talking about those real
13 estate transfer forms.

14 A Yeah, yeah. They were awful bad. And they were so bad
15 that I had to go up to my boss and apologize. That they
16 were.....

17 Q Do you know who prepares those?

18 A Yeah, I think Bill Jury did.

19 Q Getting back to your conversation with Ms. Tugman, when
20 you told her that you were doing a survey and that you had
21 to do it, what was her reaction, if any?

22 A Well, she warned me that I needed -- I should -- should
23 watch out and I -- from her demeanor, I detected a -- you
24 know, a sincere concern for my well being. And that --
25 that's the gist of it. And -- but I wanted to bring this

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1 Kanag'iq in accordance with the terms of the contract.
2 But I would say that I never heard the term unit price
3 ever during the -- until the end when -- when Ray Hamilton
4 and -- had started doing some surveys and some counts but
5 I never assumed that I would ever have to emphasize the
6 unit pricing except where there was a situation between --
7 to settle a dispute. To reconcile differences in the
8 estimated quantities in the -- and the actual quantities.
9 See I don't think there was any dispute between the
10 government and the -- Kanag'iq's terms because I always
11 knew, no matter how it was practiced into the field, I had
12 to account for it in the terms of this contract between
13 Kanag'iq and -- and the government. There was no other
14 way that -- I mean, those were the terms of the contract
15 but I never heard -- unit pricing was -- it was never
16 discussed.

17 Q At the time -- let me see if I can explain what it looks
18 like to me the process was, and then I'd like you to
19 correct me if I'm wrong. That originally each delivery
20 order -- and I'm talking now about 2004.

21 A Yes.

22 Q But then I'm going to go back and.....

23 A Sure.

24 QI'm going to talk about before that. In 2004, you
25 would do an estimate of what you thought it might take to

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1 do the fire requirements con -- the fire requirement
2 stuff.....

3 A Yeah.

4 Qfor a particular building, for example, and then
5 there would be -- you would present that estimate to
6 Kanag'iq to have Kanag'iq sign off on it, is that correct?
7 MR. GINGRAS: Object to form. Compound. Go ahead.

8 A Okay. Those -- the process -- if you look at those
9 estimates, I knew that those estimates were not accurate,
10 nor were the dollar amounts accurate. We awarded these --
11 and you know the bottom line -- we awarded these contracts
12 within a few days. We had what's called money -- end of
13 year money.

14 And those -- what we had -- for it -- applied
15 -- after we awarded all of those delivery orders at those
16 amounts, I always intended to go back and reconcile those
17 differences and fi -- and move funds by and then from
18 those projects where there was a surplus of funds and move
19 those into those delivery orders, for example, where there
20 was a shortfall. Those dollar amounts that you saw on
21 those 10 delivery orders that were -- were issued, were
22 what are called a programmed amount. The programmed
23 amount is the maximum amount that the con -- that the Air
24 Force has for that project. It's done on an estimate that
25 was made several years ago. So -- and they're never

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1 accurate. But that's what I was going to do. We were --
2 I was going to come back -- which we can, by amendment, by
3 -- and move funds from those that have a surplus into
4 those that -- where there was a shortfall.

5 And that's how we did it in terms of the --
6 this is how we did it in the field. I kept -- I tried to
7 do it by the book but I never knew exactly what the
8 amounts were going to be and I just listen, if we're going
9 to exercise this contract, the only way we're going to do
10 it is if there's a dispute, to be able to settle it in
11 accordance with the terms of the contract. But those
12 dollar amounts you see on those delivery orders, those 10
13 of them, were the maximum amount the Air Force had for
14 those projects and I awarded them for that amount. But
15 with -- always with the understanding to move funds around
16 between those to pay for the work.

17 Q And did you not do some change orders to move funds from
18 one project.....

19 A Yes.

20 Qto another?

21 A Yes, we did.

22 Q And did those change orders, the line items on those
23 change orders, actually reflect the change or was it just
24 a way to move money from one.....

25 A It was just.....

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1 MR. GINGRAS: Object to form. Compound. Go ahead.

2 A Just a way to move funds from one to the other. I tried
3 to get the accuracy down but it was so impossible. But I
4 would say that it was that way, yeah, it was to move funds
5 from one to the other, was what those modifications were.
6 And I'd try and reconcile them but that's when I said, you
7 know, there's only -- how am I going to know what it costs
8 until I get to the end of the contract and perform a
9 survey. Because that's the contract between the
10 government and Kanag'iq. You see, that -- I could not
11 deny that.

12 Q You paid -- the government paid Kanag'iq the amounts of
13 those delivery orders unless they were changed by change
14 order, isn't that true?

15 A Could you repeat that again?

16 Q Kanag'iq was paid by the government the amounts reflected
17 on those delivery orders unless that sum was changed by a
18 change order?

19 A Say that one more time.

20 Q Kanag'iq got paid the amount of the -- that was indicated
21 on the delivery order award.....

22 A Yes.

23 Qunless it was changed by change order and increased
24 or decreased?

25 A They got paid for -- for the delivery orders whether they

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1 were modified or not. You got to understand that really
2 what we did is we took all those delivery orders and put
3 them into one big.

4 Q And so.....

5 A But -- but in reality, the amounts on there in no way were
6 -- the amounts on those delivery orders in now way were
7 accurate to actually what the amounts that were in those,
8 the work that was done in each building. In other words,
9 you could have something on that -- that delivery order,
10 it could not -- would not even resemble what was being
11 installed in there.

12 All these were were convenient vehicles to move
13 funds around to pay for the work in each one of these --
14 that's all they were. It was a means of tracking funds so
15 that we have enough money to do it all, all right.

16 Q So the contract operated in the field like a lump sum
17 contract?

18 MR. GINGRAS: Object to form. Argumentative. Asked and
19 answered.

20 Q Is that true? Is that a fair.....

21 A No. Well, it may have been between Kanag'iq and GMW but
22 all I was doing is I -- I was in the position where I had
23 to be able to pay Kanag'iq in accordance with the terms of
24 the contract. That's the way I was looking at it, you
25 see. That we would move -- I always anticipated that

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1 we've have to perform an audit to reconcile the
2 differences in line items and also the -- in the
3 quantities.

4 And there was no way to get these things
5 accurate until -- there's no way -- there was going to be
6 no way for me to decide -- to determine how much contract
7 go paid except by doing an audit in accordance with the
8 terms of the contract between Kanag'iq and the government.

9 Q Are you going to change the prices paid to Kanag'iq based
10 on an audit performed after.....

11 A You mean.....

12 QKanag'iq's already been paid?

13 Aare we going -- yeah, and -- yeah, I'm obligated to
14 pay them that, you see.

15 Q So they may have to pay you money back?

16 A It is possible. I asked -- I asked that question.

17 Q I'm going to give you what I'd like to have marked as
18 Exhibit.....

19 REPORTER: All right. In order?

20 MS. TUGMAN: And I prepared this. My numbers may be off
21 but you can get a general idea from the -- this is I.

22 REPORTER: I. Exhibit I.

23 (Deposition Exhibit I marked)

24 MR. GINGRAS: Do you have a copy for me, Sarah?

25 MS. TUGMAN: I don't but would.....

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1 Q And what percentage of the work do you think Kanag'iq did
2 on this project?

3 MR. GINGRAS: Object to form. Foundation.

4 A Oh well, you know, the actual work, I think they built the
5 riser buildings.

6 Q Were there four?

7 A No, there were more than that. I would say one, two,
8 three, four. The Snow Barn. Is that all? Yeah, maybe
9 it's just four. There was the survival equipment shop and
10 then two out at the -- out at the missile storage
11 warehouse. I think that's four, yeah.

12 Q So what percentage of the total work would you say
13 Kanag'iq performed on this project?

14 MR. GINGRAS: Objection to form. Foundation.

15 A Well, those were about 10 grand a piece. Four times
16 10,000. They may have done some patch work. I don't know
17 if they did any demo. I don't know. But that was --
18 that's about it. That's right off -- those are the only
19 things that stand out, are those four riser buildings.

20 Q Well, assuming there wasn't a contract at all between
21 these parties and you were going to pay them -- you were
22 going to take the total amount paid and divide it between
23 the parties, how would you divide it up?

24 MR. GINGRAS: Object to form. Incomplete hypothetical and
25 argumentative. Go ahead, if you know.

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1 gotten more money, all right.

2 Q You looked at Exhibit A earlier and I'll give it to you
3 again. You may -- probably have a copy with an official
4 -- did you note that on Exhibit A, which purports to be a
5 subcontract between Kanag'iq and GMW, that.....

6 A Yeah.

7 Q this ended after the first year?

8 MR. GINGRAS: Object to form. Argumentative and assumes
9 facts not in evidence.

10 A Yeah, in fact I noticed that. And I was going to comment
11 on that, but yes, I -- yeah, I saw that it was for just
12 one year.

13 Q So do you know for a fact what the contract was? I mean
14 you've made a couple of comments assuming there was a unit
15 price contract as opposed to a quote from GMW for what
16 they'd do the work for. Do you know for a fact that the
17 contract was between GMW and Kanag'iq?

18 A No. No. I had made it - I would -- I had as -- I had
19 assumed that there was a lump sum. This is what was
20 strange, was -- is I assumed that the unit pricing was
21 based on what the subcontractors gave me, and that the
22 price -- it -- that the unit prices that the government
23 and Kanag'iq agreed to was a markup on the prime con -- or
24 on the subcontractor's work. So I had assumed that you
25 had -- that GMW had that type of contract with Kanag'iq.

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1 warehouse project.

2 Q Well, now Kanag'iq was paid off those delivery orders.....

3 A Yeah.

4 Qas it progressed, is that.....

5 A Yeah, well.....

6 Qtrue?

7 Awe paid them and they would pay their subcontractors
8 from that.

9 Q Right.

10 A That's the -- my main concern was getting money to the
11 subcontractors because they were struggling and -- so hell
12 I was giving them anything I was asked, and I would give
13 it to -- you know, any -- I never disapproved a pay
14 estimate. So -- so.....

15 Q Did -- you didn't -- the project documents called for a
16 count at the end of the project, is that right?

17 A I don't know if they -- what they called for is an
18 estimate before, okay. But do you see under, -- where I
19 was, they said Steve, you've got 2. -- you've got 11
20 projects, all right. You got -- they were awarded for 2.7
21 and when we ended, the total was that. But you know that
22 joint estimate form, did you ever see those?

23 Q Yes.

24 A Hell, I think we were burning up the fax machine. We
25 didn't have the time to get out there and do an estimate.

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1 What I did is I obligated those funds, you see. That's
2 the deal is each one of those delivery orders that we had,
3 the bottom line was the maximum amount that -- I didn't
4 say well we don't need this much, hell, I said I'm going
5 to take everything that we got. So I filled in the blanks
6 and -- so I could get the money, all right. Never are
7 these amounts of money that are the con -- that the Air
8 Force had programmed them for accurate. I knew it when I
9 was doing that but this is what we do when we get this
10 money, you got four days to award 10 delivery or 11
11 delivery orders.

12 Q Right.

13 A Ridiculous.

14 Q And you were trying to get.....

15 A I got as much.....

16 Q the best job, the best fire protection system you
17 could for the government with the money that you had.

18 A Yeah. Those -- remember that all -- what I did is -- and
19 you see what's ironic, our contracting squadron has
20 finally realized that it's insane to impose this type of
21 pressure on the engineer. Because where you sit, you've
22 got to do a joint estimate and you've got this amount of
23 money to do it with. And it wasn't -- every one of those
24 damn delivery orders amounts I knew were nowhere near
25 accurate. All I wanted to do is get the money and then

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1 once I got the money, we would go out and we would do
2 joint estimates, bids if you would, that I would have to
3 translate into the unit prices that I gave -- that I had
4 to pay Kanag'iq for. But I had always assumed -- and I
5 tried. I was tak -- I don't want to say taking money,
6 those are two things you just don't say, take or give.
7 You pay, you reallocate, but you don't say take or give.
8 Our contracting officer -- one of our engineers was, well
9 I was going to give him \$25,000, and Lucy goes give?
10 Give? You know, she stood up, the government doesn't give
11 money to anybody, they pay the contractor, but they don't
12 give any money.

13 So -- so that's -- you see, this is what I was
14 up against. I was -- I was trying to do it by the book,
15 sending modifications up to contracting, that were nowhere
16 near accurate anyway, just to reall -- to be able to
17 reallocate it by the book. We were overwhelming poor
18 Becky Rosa, she was, how can you have so many
19 modifications on this contract? And said, you don't want
20 to know. So -- and it wasn't working. So we took it
21 among ourselves to say this is what we're going to do,
22 we're going watch this thing, you see. We're going to
23 watch it so that it doesn't get out of control. So all
24 those amounts, all those delivery orders I got, they could
25 no more ri -- that you saw when we did our joint

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1 unit prices, I'm going I'm going to get hosed here if I do
2 -- silence was what -- I didn't hear any -- any -- any
3 noise and I said, hey now when you pay 2.6 million dollars
4 out for all this work, that's a 2.6 million dollar
5 project. And then I also felt relieved that you see that
6 GMW is going to get 1.9 million. So I said, all right,
7 2.6 that Kanag -- GMW will -- will -- is going to get 1.9
8 million and -- all right. And I thought that we were all
9 over.

10 Q Do you know how much GMW has actually been paid?

11 A No. Well, I heard 1.6 million, I think is what it was.
12 See, and that was.....

13 Q Okay.

14 A Yeah.

15 Q Okay. Why are you doing a count now? I'm not -- a count
16 now?

17 A Well, I have to. I have to. I have to determine what the
18 government -- what -- whether I'm high or low -- you see
19 you're never going to come out right on the button. It's
20 either -- you're going to -- it will be either the
21 government owing Kanag'iq or Kanag'iq owing the
22 government, all right.

23 Q Uh-huh. (Affirmative)

24 A That's what it -- that's what it comes down to.

25 Q Is the only reason you're doing a count now because of Mr.

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1 Jury asked you to because of this litigation?

2 A No, he never asked me for anything. I just felt that I
3 have to do this now, you see. And if they want me to be
4 going out and doing these counts with them then, you know,
5 I made it clear that it's not going to be baloney. I
6 mean, if we screw up quantities and -- and screw them up
7 and we go back and do them over again.

8 Q Well, what.....

9 A But we -- but I have to -- I -- I was wondering, you know,
10 essentially why we were doing this but I understood
11 because it's this type of con -- if he has this type of
12 contract with GMW, he's doing what he should have been
13 doing all along, doing what I should have been doing all
14 along too but I said the heck if I'm going to be doing it
15 all along. I mean, it was enough -- can you imagine what
16 we in -- and everybody was under tremendous pressure on
17 this contract. I mean, I know that I was.

18 Q Did GMW do a good job on the contract?

19 A Are you kidding? They did -- they were the best. Heck,
20 they're the reason -- they're the reason why -- they are
21 the reason why they're working with Windsor on this
22 contract -- the current contract. You know, Glen came to
23 me and he apologized when this ruc -- you know, he was
24 sucker punched by -- when all this came down where they
25 were behind schedule, didn't know what was going on. He

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1 because of this contract. We -- you know why we did it,
2 is because we obligated money, that's the commanders care
3 -- we got the money, we executed. And there were times
4 when I thought I was going to can -- I was going to cancel
5 this because I couldn't do it by the book procedurally. I
6 couldn't be -- there was no other way that we could have
7 got this job done other than the way we did it. The heck
8 if I'm going to stop because I -- work because I can't do
9 the paperwork the way it's supposed to be. It was that
10 type of contract.

11 We had so much trust. I mean, it was like a
12 big old family and everything. I mean, there was
13 bickering and sniping, back -- not much back -- there was
14 never any back stabbing or anything like that but we were
15 all totally open. And -- and we went from first -- we
16 went from worst to first because of this contract.

17 Q Did Kanag'iq always have a representative at inspections?

18 A No, their absence was staggering.

19 Q In fact, did GMW's people sign off for Kanag'iq on some of
20 the final inspection documents?

21 A God, I wouldn't know.

22 Q Okay.

23 A Probably. I mean, if there was somebody from Kanag'iq
24 there, they would -- they would just stand back and let
25 -- let, you know, we had -- GMW ran the show. I just sat

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1 A Yes.

2 QI'm not going to make you go through them. I get the
3 point that they're not -- the don't.....

4 A They're -- they were such -- the most ridiculous documents
5 I had ever seen. I went up to the poor guy -- see my boss
6 kind of goes, God -- and he takes this stuff seriously,
7 you know, he's -- that's his job and I go Keith, give me
8 those things, will you? I'm -- he was -- he takes this
9 stuff seriously and he's -- I'm trying to get these to add
10 up and I said, Keith, Keith, just give them to me. I'll
11 take care -- and I had to go apologize to my boss. I said
12 I don't know who made you -- delivered these to you before
13 you sign them, but I mean, you've got all the big shots in
14 the squadron -- you know, they don't -- they assume that
15 what they're getting is -- is competent and so I said,
16 give me those things, will you. I'm going to be the one
17 that signs them this time.

18 Q But you didn't prepare those documents?

19 A No.

20 Q Okay. I noticed on a few of them there's kind of
21 relatively large sums for ceiling tile removal. Who did
22 the ceiling tile removal project?

23 A I don't know. I don't know. You see what -- let me --
24 you know, when you see ceiling tile removal, yeah, you --
25 to me, on those original delivery orders, ceiling tile --

1 those ceiling tiles could have been -- I mean, I could
2 have four fire hydrants is equivalent to 2,000 square feet
3 of -- I mean, when we're doing the survey and the audit,
4 we're doing it with the understanding that in the terms of
5 what it was intended, so you're right, if 50,000 square
6 feet of ceiling tiles weren't removed and reinstalled,
7 then you don't get paid for 50,000 square feet of ceiling
8 tiles that were removed and reinstalled. So.....

9 Q Okay.

10 A So -- but yeah, these are the initial delivery orders.
11 Those were just a place to fill in the blanks to execute
12 the pro -- to get the money.

13 Q Okay.

14 A And remember the idea was to go back and try and get these
15 things accurate, which was impossible.

16 Q Did you -- when you did this count or watched Mr. Jury
17 count or did you count.....

18 MR. GINGRAS: Object to form. Compound.

19 Q this Exhibit H? Who counted for Exhibit H?

20 A I didn't do all -- you know, I didn't do all the sprinkler
21 heads, for example. You know, I was there with him but I
22 didn't -- you know, I'm not going to count. The thing
23 about it is, is I figured my contractor is going to, you
24 know, I have confidence when I'm going out there that
25 they're going to do the right thing. So I went along with

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1 But I think that's about it. I think all the stuff that
2 was exposed we saw. I think the counts for the expose
3 stuff were accurate. I do. I.....

4 Q Did.....

5 A But I didn't get out there with a tape measure and start,
6 you know, I didn't do that. Bill had a wheel, you know,
7 and he was doing the linear and then.....

8 Q Did you do a count at the end of contract year 2000?

9 A No.

10 Q 2001?

11 A No. I did.....

12 Q 2002?

13 A No.

14 Q 2003?

15 A No.

16 Q So this was the only year you did a count?

17 A Yes.

18 Q Okay. And actually you did it in 2006?

19 A Well, yeah, we're doing it now. We never did -- you see,
20 I nev -- remember, I never thought it would ever be
21 necessary to do this unless there was trouble. But I
22 always had -- you know, I'll tell you, as long as I didn't
23 hear any griping, that's how this contract worked, really,
24 but.....

25 Q Do these counts in Exhibit H, do these show demolition

1 work done by GMW?

2 A No, they don't. And that's one line item that I -- I had
3 wished I have had in there, you know. When you go out
4 there and do these types of contract, you know, I think
5 the wide body -- I mean, the work is very transparent, you
6 see, and -- and a contractor, he's going to enter in a
7 contract like this, he's got to be -- he's got to assume
8 he's going to have to work in the context of that
9 contract.

10 And so if there's some incidental demolition,
11 that I'd assume he'd have that in there. But one of the
12 line items I would put in if -- are going to do a new one
13 would be, I would call it selective demolition and I'd
14 probably want to have that as an negotiable amount because
15 demolition is just so difficult to pin down on a price.

16 Q It depends on the -- what you're demo-ing, doesn't it?

17 A Oh yeah, yeah. I -- that is one thing that -- that is one
18 that thing that -- but you know I had always felt that,
19 you know, after we -- if there's any disputes -- and if I
20 was using the contract, you know, that if we go out there,
21 we do our surveys -- we go out there, we do our surveys
22 and you get an idea of who and what you're dealing with
23 and -- when you're doing these surveys and then you take
24 that back to the table and then you negotiate a unit
25 price. But that's if you're prac -- if you're practicing

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1 this contract in that manner, that's what you would do for
2 missing line items, okay. And we did do it, like for fire
3 pumps. I want -- you know, the bladders for example, that
4 one there. I mean, what did we pay for that? We prob --
5 I don't know, how many square feet of -- of -- of ceiling
6 tiles did we -- you know, that's basically what they were
7 was currency.....

8 Q Sure.

9 Ato pay for other -- that.....

10 Q Exit signs, same thing, currency?

11 A Well, it depends. You see, you got to understand that
12 from my perspective, if we're going to do it like this --
13 and I'd see -- I -- when I would see exit signs down
14 there, that would bother me if that's how you were
15 practicing this con -- see, the exit signs, I would -- for
16 example, if I would have been able to do -- I would have
17 taken those exit -- those exit signs, I wouldn't have in
18 there anywhere. What I was trying to do when these
19 contract -- I was taking exit signs out. When I was doing
20 my mods, I was trying to reconcile what -- you know, I
21 wouldn't have left in anything for demo if those exit
22 signs would have been out there. My mods were trying to
23 be per exactly what is in there. Of course, I had --
24 didn't see the drawings until maybe three months after.
25 Do you see what I'm saying? That's what -- I was trying

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1 There was -- there -- see there was -- the compressor had
2 a unit price that included the -- included the disconnect.
3 It included a package for that and I think it was around
4 1400 bucks or whatever it was, I can't remember. And that
5 was a complete unit right there. Now the wiring to it,
6 there would be a separate -- there were the means to --
7 there was conduit and wire that they could connect this
8 package from air compressor, okay. So the way -- if you
9 read the language in the specifications of what -- I
10 describe the air compressor complete with the exception to
11 the hookups to a electrical demo. So.....

12 Q Okay.

13 A the compressor prices, you know, that compressor
14 price is quite high to -- I noticed that. And that's
15 because that was -- it required a complete unit.

16 Q Okay.

17 A So.....

18 Q Let's see. What kind of alarm systems did GMW install on
19 this project? Were they addressable or conventional?

20 MR. GINGRAS: Object to form. Compound.

21 A They were addressable, and that's another thing. What we
22 were going -- what I had planned to do was when we -- you
23 know, I paid Kanag'iq, I don't know, what, \$4,000 for a --
24 we didn't have a line item for an addressable. But I had
25 the line -- we had a line item for conventional. And when

1 Q Okay.

2 A I think they may have done some concrete and landscaping
3 work in there. In that mod, for that mod.

4 (Exhibit 63 Proffered)

5 Q I'm going to show you what was marked at Mr. Jury's
6 deposition as Exhibit 63 and it appears to be a fax from
7 you to Kanag'iq. Is that illustrative of what you were
8 talking about, moving the money around?

9 MR. GINGRAS: What number Exhibit was that?

10 MS. TUGMAN: It says 63.

11 Q You were talking about having a limited time to award the
12 contracts.....

13 A Yeah, absolutely.

14 Qand move the money around.

15 A This is -- this how we did it.

16 Q Okay.

17 A Remember the bottom line there is what the maximum that
18 the Air Force had allotted for that project, which are
19 always totally unreliable, all right. These were amounts
20 that I had, the maximum amount that the Air Force could
21 pay for each of these delivery -- if you look at those
22 delivery -- all the delivery orders, the bottom line on
23 all those delivery orders, when we initiate them, the
24 joint estimate, you see, the bottom line was what the Air
25 Force had budgeted. Because that's what I could do, I

1 could -- but I had the intent to go back and, you know,
2 move by modification funds where we had a -- a surplus
3 would go in to pay for the -- those that had a shortfall.

4 Q Okay.

5 A But that would have been -- I would have been doing that
6 continually throughout the entire contract.

7 Q Okay.

8 A So yes, this is how we did it.

9 Q Okay.

10 A I mean, I say I got -- we've got this project, we got an
11 award, it's coming in. I mean, sign it and give it back
12 to me. We'll go back once it's awarded and reconcile and
13 do any changes that are necessary in estimated quantities.

14 Q And Kanag'iq, for the most part, didn't ask you to make a
15 lot of changes, did they?

16 MR. GINGRAS: Objection. Argumentative.

17 A No, it's more -- I should have been the one that would be
18 making those changes for -- see that was my
19 responsibility. So it wouldn't have been Kanag'iq's
20 responsibility, it would have been mine to make the
21 changes. But I didn't think it -- it -- well, I tried to
22 make the changes but those changes were never really
23 accurate.

24 Q Does.....

25 A Because in the terms of the contract, I have to -- every

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1 -- I got to have every estimated quantity and every
2 description of work identical that -- it's out there in
3 the building, which is impossi -- unreasonable and darn
4 impossible to do.

5 Q Well, I sure wouldn't want to be the one counting four or
6 five thousand sprinkler heads.

7 A Well yeah.

8 Q Did -- there was something about a bladder and a foam
9 tank?

10 A Yes.

11 Q What was that?

12 A That was -- yes, there was the bladder. I was going to do
13 a mod for that one. But we were going to pay for that
14 work from what -- a surplus that we had on another
15 delivery order. And I had made that clear. In fact, that
16 was my understanding, that you had been paid for that, all
17 right. But that was going to be like we did any other
18 delivery order, you see, we would move funds from that 2.6
19 million, we had to -- see that was important. We had 2.6
20 million and as long as I could pay for the work with the
21 2.6 million, technically there should have been mod but by
22 a handshake and agreement and responsibilities, that GMW
23 would get paid from that pool of -- that started with 2.6
24 million dollars.

25 MS. TUGMAN: Okay. Thank you. I have no further

1 did not somehow turn the contract into anything but a unit
2 price contract?

3 A No -- well, I always assumed that, okay. And I don't
4 think there was ever any dispute between the government
5 and Kanag'iq over the terms of their contract.....

6 Q Okay.

7 Ayou see.

8 Q Right.

9 A But I had never felt it was necessary to do it because I
10 -- we had sufficient funds all the time. And everybody
11 was happy, that was one of the primary reasons, is that
12 people weren't complaining.

13 Q Okay.

14 A But I always had prepared to come back and do this audit,
15 because that is the contract. I mean.....

16 Q Yeah.

17 Aif anybody tried to tell me otherwise, no, you know.

18 Q And the prime contract had a base year and two option
19 years or how ever many are contained in the contract.

20 A Yeah, I forget how many actually but I think there were
21 three years. Yeah, two option years.

22 Q And earlier Ms. Tugman was asking you some questions about
23 Exhibit A, the Kanag'iq contract with GMW. Had you ever
24 seen that contract until today?

25 A No.

1 A Yeah, I told them you guys -- you know, what are you guys
2 doing, paying them for everything?

3 Q And what kind of response did you get?

4 A Nothing.

5 Q Did anyone ever tell you that it was going to be sorted
6 out towards the end of the contract?

7 A No.

8 Q Isn't it fair to say that the way Kanag'iq was running the
9 project vis-a-vis GMW was very much the way the project
10 was being run as between the government and Kanag'iq, that
11 is time pressure, getting it done, and we'll sort it out
12 at the end of the survey?

13 A Yeah, they were -- I always assumed that this is what we
14 would have to do, that we would sort it out at the end of
15 the con -- this -- I was always prepared to have to do
16 this because this was the terms of the contract between
17 the government and -- it was when they started doing these
18 surveys, I said well these guys actually know what type of
19 contract they do if they're doing these surveys, all
20 right.

21 Q Okay.

22 A That's what -- that's what led me to believe that Kanag'iq
23 was -- was beginning to understand the terms of their
24 contract and when they started doing their -- when they
25 started doing their surveys. I mean, what else would they

1 Q Mr. Frere, you said that you assumed that Mr. Jury and
2 Kanag'iq, because they were taking counts, had a item --
3 unit price contract with GMW? That's an assumption?

4 A That.....

5 Q You didn't know that for a fact?

6 A That's a -- that as an assumption that -- yes, that was an
7 assumption, that they had that same type of contract. It
8 was also an assumption that they had that type of contract
9 with us too. I made that assumption on that, that -- I
10 said he's actually doing what he's supposed to be doing in
11 terms of -- but it was an assumption in my -- that the
12 type of the contract that GMW had with Kanag'iq, it was an
13 assumption then. But then that later changed when I was
14 hearing that -- that it wasn't. I don't know if it was
15 from Glen or who.

16 So I really didn't know what type of a contract
17 that GM -- GMW had until I did this investigation and --
18 and, you know, exactly what type of contract do you have.
19 And he says, well, it's a unit price. So I said, you've
20 got one just like we do with you, you know, with them.
21 That's what I thought. But I kept thinking you had some
22 weird hybrid type of contract. You know, it didn't make
23 any sense with me. But I knew the type of contract we had
24 with -- with Kanag'iq, I mean. And that's what was on my
25 mind. But it wasn't until the end or near the end of the

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1 final year, option year, that it was emphasized, the unit
2 pricing by Kanag'iq.

3 Q Did you see Kanag'iq ever do counts or surveys prior to
4 2004?

5 A No.

6 MR. GINGRAS: Form. Compound.

7 MS. TUGMAN: Thank you. That's it.

8 STEVE FRERE

9 testified as follows on:

10 REDIRECT EXAMINATION

11 BY MR. GINGRAS:

12 Q I think I already asked you this, but having looked at
13 Exhibit A, which I'll represent to you is the subcontract
14 that was executed between Kanag'iq and GMW, that reads as
15 a unit price contract, correct?

16 A Yes.

17 MR. GINGRAS: That's all I have.

18 STEVE FRERE

19 testified as follows on:

20 RECROSS EXAMINATION

21 BY MS. TUGMAN:

22 Q Do you know how the two thou -- in 2000 year, how the
23 project operated in the field?

24 A In what year?

25 Q How Kanag'iq and GMW, do you know the billing practices